FILED
02-22-08
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| **Order Instituting Rulemaking Regarding Policies, Procedures and Rules for California Solar Incentive, the Self-Generation Incentive Program and Other Distributed Generation Issues** | : | **Rulemaking 06-03-004 (Filed March 2, 2006)** |

**UTC POWER**
**COMMENTS**
**ON**
**FUELCELL ENERGY AMENDED PETITION**
**FOR MODIFICATION OF DECISION OF 04-12-045**

February 22, 2008

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**FUELCELL ENERGY AMENDED PETITION**
**FOR MODIFICATION OF DECISION 04-12-045**

## I. Introduction

Pursuant to the Administrative Law Judge's Ruling Requesting Comment on Amended Petition dated February 14, 2008, UTC Power respectfully submits these comments on FuelCell Energy's ("the Petitioner") Amended Petition for Modification of Decision 04-12-045 ("Amended Petition"). UTC Power appreciates the opportunity to provide its views to the California Public Utility Commission ("Commission") on requested increases to the incentive caps in the Self Generation Incentive Program ("SGIP" or "program").

The key issue presented in the Amended Petition is whether the Commission should maintain the SGIP's 1 MW cap on incentives for any one project to continue to ensure that one customer does "not use up an unreasonable amount of SGIP funds".[1] The Commission should preserve the SGIP incentive cap design element that prevents one project from claiming excessive funds. UTC Power respectfully request that the Commissioner maintain that central program feature and not modify the SGIP in a way that would considerably reduce the number of customers able to participate in the program.[2]

In these comments, UTC Power focuses primarily on: 1) the inaccuracies in the Amended Petition's statement of benefits associated with the requested modification; 2) the inadequacy of the Amended Petition's proposed "limitations" it suggests could

[1] D01-03-073 dated March 27, 2001 at 4.6.1.

[2] The Commission's policy to ensure SGIP funds are available for broad distribution appears in various SGIP elements. For example, in explaining SGIP treatment of a project's receipt of funds from other sources, the Commission stated: "These restrictions are intended to protect ratepayers from paying projects more than they cost, and to assure that funding is available to promote as many projects as possible." See, D04-12-045 dated December 16, 2004 at Section 3.3

concurrently increase the incentive cap for large projects and preserve SGIP funds for broad distribution, with a particular focus on the way in which the proposed incremental incentives up to 3MW would still dramatically limit funding for other projects; and, 3) the importance of SGIP fund availability to continued widespread fuel cell deployment and market maturation.

## II. The Benefits the Petition Claims Would Result from the Proposed Modification are Inaccurate.

In support of its request to raise the incentive cap, the Petitioner argues that "the potential benefits to host customers and ratepayers clearly justify increasing the SGIP incentive cap from 1 to 3 MW".[3] The benefits asserted in the Petition are inaccurate.

First, the Petition states that raising the incentive cap to fund large projects would:

> "enable a greater market transformation for fuel cell technology (and other eligible technologies) across the board. FCE as well as other manufacturers are best able to reduce product costs via larger production volumes. As discussed above, economies of scale are recognized in raw material procurement and production labor when a higher volume of fuel cells are being manufactured and sold".[4]

The contention is untrue. Modifying the SGIP to increase funds available to large projects will result in a limited number of large projects: it will not result in market transformation for fuel cell technology across the board as the Petition claims. Further, it will not achieve market penetration levels that will lead to market transformation for the fuel cell industry. To the contrary, modifying the SGIP incentive cap to provide additional funds to large projects would allow a limited number of projects to absorb available funds in any given year. This could cause a decline in the industry's overall production volume, and the price reductions that follow. Finally, a reduction of SGIP funds available for broad distribution would impede, rather than encourage, competition in fuel cell technology and price and ultimately, market maturation.

To illustrate the potential impact of the Amended Petition on the overall fuel cell market, consider the following. The Amended Petition indicates the Petitioner would support a tiered system of incentives for a 3 MW project whereby the first MW would receive $4.50/watt in funding and the second and third MWs would receive funding of

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[3] Amended Petition at page 14.
[4] Amended Petition at page 14.

$2.50/watt, for a total project incentive of $9.5 million.[5] The net effect is that one project would consume 11.4 percent of an $83 million SGIP budget. This would enable just 8.7 projects to be funded annually (assuming large projects received the entire annual SGIP budget, an outcome which outcome is not precluded by the proposed limitations, discussed further below).

The Petitioner also indicates that it would support a three tiered approach to increasing funding for large projects, whereby the first MW would qualify for $4.50/watt, the second MW would receive $2.50/watt and the third MW would receive $1.50/watt.[6] Under this scenario, one 3 MW project would use $8.5 million or 10.2 percent of an $83 million annual SGIP budget. In that case, the annual SGIP budget could support 9.7 projects.

Under either scenario, the overall funding level is so high that one project would use about 10 percent of the total annual SGIP budget and less than 10 projects could be funded annually, assuming that large projects consumed the entire SGIP annual budget. This suggests that the Amended Petition's claimed market transformation effect of granting more funds to large projects is over-amplified. And, importantly, allowing large projects to consume a considerable portion of the SGIP annual budget would unquestionably impede continued market transformation for the industry more broadly.

| **TWO TIERED SYSTEM** | | | |
|---|---|---|---|
| **Size** | **Amount Of Funding Per Project @ $4.50/Watt For First Megawatt And $2.50/Watt For Megawatts Two And Three** | **% Of 2008 SGIP Budget (Assumed At $83 M) Dedicated To Single Project** | **# Of Projects That Could Be Supported Assuming $83 M SGIP Budget Were Devoted Exclusively To 3 MW Systems** |
| 3 MW | $9,500,000 | 11.4 | 8.7 |
| **THREE TIERED SYSTEM** | | | |
| **Size** | **Amount Of Funding Per Project @ $4.50/Watt For First Megawatt; $2.50/Watt For Megawatt Two And $1.50/Watt For Megawatt Three** | **% Of 2008 SGIP Budget (Assumed At $83 M) Dedicated To Single Project** | **# Of Projects That Could Be Supported Assuming $83 M SGIP Budget Were Devoted Exclusively To 3 MW Systems** |
| 3 MW | $8,500,000 | 10.2 | 9.7 |

[5] Amended Petition at page 15.
[6] Amended Petition at page 16.

Second, the Petition claims that "[r]atepayers would continue to derive the same benefits from the SGIP that have been identified throughout its existence, except that the potential for new applications for fuel cell and other technologies that can only be economically marketed if sized over 1MW will be augmented..."[7] If the Petitioner's modification was adopted, ratepayers would not enjoy the same benefits from the SGIP that have been identified throughout the program's existence because the modification asks for a fundamental programmatic change. That is, in creating the SGIP, the CPUC said: "We believe that a size limitation is reasonable in order to provide options to assist in the installation of self-generation systems for as many California customers as possible."[8] Further, the Commission explained "[t]his (1MW) size represents a fairly large installation for a single customer site and, at the same time, will not use up an unreasonable amount of program funding."[9] The level of SGIP funds the Petition seeks for a single project would mean some SGIP administrators' annual budgets could fund one large project, and others, a few.[10] Such an outcome would not allow ratepayers to enjoy the same benefits from the SGIP as they have historically: from its outset, the SGIP has been structured purposefully to limit the amount of funds available to any one customer in order to preserve the program's ability to assist many. The Petitioner's proposal would change that basic feature of the SGIP design and correspondingly change the opportunities currently available to ratepayers.

**III. The Proposed Mechanisms that Purport to Simultaneously Preserve the SGIP Budget and Raise the Cap on Incentive Levels For Large Projects Are Not Effective.**

As a threshold matter, the Petition states that concerns about budget depletion is somewhat mitigated by several factors, such as, for example, that there will be carryover funds from 2007.[11] These factors do not mitigate the concern about budget depletion. The SGIP has shown steady growth in fuel cell deployment since its outset.[12] Carry over funds in one year might reflect new product development cycles or long sales cycles but

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[7] Amended Petition at page 14.
[8] D01-03-073 dated March 27, 2001 at Section 4.6.1.
[9] D01-03-073 dated March 27, 2001 at Section 4.6.1.
[10] If the SGIP was intended to fund very few projects, query whether it would have been structured on a first come, first serve basis rather than a competitive process where a limited number of projects vie for a substantial portion of available funding.
[11] Amended Petition at 15.
[12] Amended Petition at 5.

they certainly do not suggest that it is the proper time to modify the program in a way that would reduce fund availability.

The Petitioner advocates "limitations" that it contends would satisfy concerns about large projects depleting annual SGIP budgets.[13] The suggested "limitations" include: 1.) limiting eligibility for incentives above 1 MW to renewable projects; 2.) establishing tiered payment limits for installed capacity above 1MW to renewable projects; and, 3.) approving the increased incentives on a two-year "pilot basis", with extension only upon Commission review.[14]

At the current SGIP budget level, these limitations do not solve the central problem the Petitioner's proposal raises. That is, they would not effectively preserve finite SGIP funds for broad distribution and simultaneously increase funding for large fuel cell projects.

First, lifting the incentive cap for large renewable projects with the proposed "limitations" would still result in a few large projects absorbing an unreasonable level of the SGIP annual budget. Under the existing one MW cap for incentives, the maximum amount of funding per project is $4.5 million. Assuming an annual budget of $83 million, a single one MW project would consume 5.4 percent of that budget. The Amended Petition's proposed tiered approach would provide a maximum of either $8.5 million per project under the proposed three tiered system, or $9.5 million per project under the proposed two tiered system. This would result one 3 MW project consuming 10.2-11.4 percent of the 2008 SGIP budget, essentially doubling the maximum available incentive. The tiered approach "limitation" would not resolve concerns about large projects depleting annual SGIP budgets and would constitute a significant departure from the existing program design, which makes incentives broadly available to potential customers.

Second, the proposed tiered incentive approach for large fuel cell projects would still result in a material impact on individual administrators' SGIP budgets. The Amended Petition a considers a "limitation" to be a structure that would provide $4.50/watt for up to the first MW, and $2.50/watt for incremental MW up to 3MW.[15] Alternatively, the Petition would support a three tier structure that provides $4.50/watt for the first MW, $2.50/watt up to 2MW and $1.50/watt up to 3MW.[16]

[13]. Amended Petition at page 15-16.
[14] Amended Petition at page 15 -16.
[15] Amended Petition at page 15.
[16] Amended Petition at page 16.

For illustrative purposes, assume the annual SGIP budget is $83 million. Further, assume PGE's annual budget is $36 million; SCE's is $28 million, SDGE's is $11 million and SoCalGas' is $8 million. Finally, assume no wind projects seek SGIP funds. In this scenario, one 3MW fuel cell project receiving the proposed incentive level of $4.50/watt for the first watt, and $2.50/watt for the second and third MW would receive about $9.5 million. This one large fuel cell project could deplete or come close to depleting two administrators' annual budgets. The other two administrators' budgets would be exhausted by 3-4 large fuel cell projects. The proposed incremental incentives for large projects would allocate an unreasonable amount of SGIP funds to such large projects. The SGIP budget is simply not large enough to support the Petitioner's request and continue to make funds broadly available.

It is instructive that when the Commission first adopted incentive caps to address concerns about large projects depleting the budget, the Commission observed that "one system of this maximum size (1MW) would only receive about one-third of the available funding in SDG&E's service territory, which is the smallest budgeted program".[17] The Petitioner's incentive proposal styled as a limitation would make a dramatic change in this respect by allowing one project to consume all of the smallest budget and one-quarter of the largest budget.

Finally, a two-year period "pilot program" during which the incentive cap is lifted for large projects followed by an after- the- fact evaluation on SGIP fund availability is entirely inadequate. The impact review would occur only after SGIP funds could be depleted by a few large projects, and after other fuel cell customers are adversely affected. In other words, this limitation framed as a "pilot" would leave open the very real possibility that in 2008 and 2009, the SGIP budgets would be consumed in large part by large projects. In 2010, a review showing that fact would not prevent such an outcome or retroactively restore funds for distribution.

In sum, the proposed limitations would not achieve their stated purpose which is to limit the ability of large projects to deplete SGIP funds.

## IV. The SGIP's Current Program Design Is Achieving the Goal of Enabling Increased Fuel Cell Deployment and Market Maturation.

[17] D01-03-073 dated March 27, 2001 at Section 4.6.1

Program data illustrates that fuel cell participation in the SGIP has grown impressively since its inception.[18] This means the incentives levels, with current caps, are working as intended to increase fuel cell installations in the state.[19] The steady increase in fuel cell participation under the program as structured suggests now is exactly the wrong time to interrupt the SGIP and fuel cell customers' response to it. Even if, hypothetically, the Amended Petition presented firm market data to support its representations concerning potential interest or reasonable possibilities associated with large projects[20], the change the Amended Petition seeks risks serious disruption to the steady growth in fuel cell projects under the SGIP with the 1MW incentive cap.

Increasing the number of fuel cells manufactured and sold is the path to achieving economies of scale across the fuel cell industry, which will in turn lead to price reductions. Continued broad distribution of SGIP funds is critical to achieving this end, and to sustaining technology and price competition.

**V. The Record Does Not Support Increasing the Incentive Cap for Wind Projects.**

With regard to wind projects, the Request for Comment dated February 14, 2008 requested comment on whether the record supports consideration of increasing the cap on incentives for wind and fuel cells or only fuel cells. UTC Power respectfully suggests the record does not support a shift in policy on the incentive cap to let any one project consume an unreasonable amount of funds.

Parenthetically, the Amended Petition explains fuel cell projects' benefits relative to intermittent wind and solar resources to support its request to raise the incentive cap.[21] The comparison is irrelevant to the central issue in this matter. California has determined that fuel cells, wind and solar merit public support to facilitate market transformation and that these technologies' contribute to the state's energy and environmental goals. The relevant issue is the adverse effect that raising the incentive caps to fund large projects would have on SGIP fund availability.

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[18] Amended Petition at 5-6.

[19] The Amended Petition observes that the consistent upward trend in fuel cells capacity in the SGIP has "somewhat flattened" in 2007. The fuel cell data to date shows steady growth in capacity and number of active projects. Moreover, UTC Power expects this trend to continue. For example, UTC Power will launch a new 400 kW stationary fuel cell system in 2008 and expects strong market acceptance.

[20] Amended Petition at 8, 15.

[21] Amended Petition at page 13.

### VI. Comment on Confidential Data

The Petitioner requested leave to file data to support its request for modification under seal. The Request for Comment issued on February 14, 2008 indicated parties could comment on such motion at this time. UTC Power does not object to competitively sensitive data being filed under seal. We note, however, that the central question is not whether large projects would benefit from funding above that available through the SGIP as currently structured. Indeed, the SGIP specifically contemplates some projects may obtain additional funds, and accounts for funding from other sources in the SGIP incentive calculations.[22] Even if the confidential data establishes that large projects would benefit from funding beyond that available through the limited SGIP budget, the proper solution is not to modify the SGIP in a way that would allow large projects to consume an unreasonable amount of SGIP funds.

### VII. Conclusion

UTC Power respectfully requests the Commission maintain the SGIP program incentive caps so that funds can be broadly distributed, fuel cells can be widely deployed, and the fuel cell industry can continue its present course of steady growth under the SGIP. UTC Power appreciates the opportunity to provide it views and the Commission's consideration.

Dated: February 22, 2008

Respectfully Submitted,

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[22] SGIP 2007 Handbook at 3-3.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of "UTC POWER REPLY COMMENTS ON PROPOSED DECISION OF COMMISSIONER PEEVEY OPINION DENYING PETITION BY FUELCELL ENERGY TO MODIFY DECISION 04-12-045" on all known parties to R06-03-004 and parties to Rulemaking 04-03-017 by transmitting an email message with the document attached to each party named on the official service list. Parties who did not provide an email address were mailed a properly addressed copy via first class mail with postage prepaid.

Executed on this 22nd$^{th}$ day of February in the year 2008 in South Windsor, Connecticut

John O Schuster